

## **PROGRAM FOR WATER QUALITY ASSESSMENT BY WATERSHED**

### **§320.21. Water Quality Assessment Fees.**

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) BOD - Five-day biochemical oxygen demand.

(2) COD - Chemical oxygen demand.

(3) Consumptive use - The use of water for domestic and municipal, industrial, irrigation or mining purposes, consistent with the meaning of these uses for which water may be appropriated under the Texas Water Code, §11.023 and §11.024.

(4) Final flow limit - The maximum amount of wastewater discharge authorized by a permit issued in accordance with the Texas Water Code, Chapter 26 expressed as a daily average flow, a daily maximum flow, an annual average or an annual maximum. For the purpose of this section, a final flow limit is expressed in millions of gallons per day of discharge (MGD).

(5) Flow - The total by volume of all wastewater discharges authorized under a permit issued in accordance with the Texas Water Code, Chapter 26, expressed as an average flow per day, a maximum flow per day, an annual average or an annual maximum, exclusive of variable or occasional stormwater discharges. Generally, the flow amount used to calculate fees is the sum of the volumes of discharge for all outfalls of a facility, but excludes internal outfalls. However, for those facilities for which permit limitations on the volumes of discharge apply only to internal outfalls, the flow amount used to calculate fees is the sum of the volumes of discharge for all internal outfalls of the facility, exclusive of variable or occasional stormwater discharges.

(6) Flow type.

(A) Contaminated - These wastewaters include sanitary wastewater, process wastewater flows or any mixed wastewaters containing more than 10% process wastewaters;

(B) Uncontaminated - These wastewaters include non-contact cooling water or mixed flows which contain at least 90% non-contact cooling water and not more than one million gallons per day of process wastewater.

(7) Hydropower use - The use of water for hydroelectric and hydromechanical power and for other mechanical devices of like nature.

(8) Inactive permit - A permit which authorizes a waste treatment facility, where the facility itself is not yet operational or where operation has been suspended.

(9) Industrial use - The use of water in processes designed to convert materials of a lower order of value into forms having greater usability and commercial value, including commercial feedlot operations, commercial fish production and the development of power by means other than hydroelectric.

(10) Irrigation use - The use of water for the irrigation of crops, trees, and pasture land, including but not limited to golf courses and parks which do not receive water through a municipal distribution system.

(11) MGD - Million gallons per day.

(12) Mining use - The use of water for mining processes including hydraulic use, drilling, washing sand and gravel, and oil field repressuring.

(13) Municipal use - The use of treated water within or without a municipality and its environs whether supplied by a person, privately-owned utility, political subdivision, or other entity as well as the use of municipal sewage effluent for certain purposes specified as follows. It includes the use of treated water for domestic purposes, fighting fires, sprinkling streets, flushing sewers and drains, watering parks and parkways, and recreational purposes including public and private swimming pools, the use of treated water in industrial and commercial enterprises supplied by a municipal distribution system without special construction to meet its demands, and for the watering of lawns and family gardens. Municipal use also includes the application of municipal sewage effluent upon land sites, pursuant to a Texas Water Code, Chapter 26, permit, where:

(A) the primary purpose of the application is the treatment and/or necessary disposal of such effluent; or

(B) the application site is a park, parkway, golf course, or other landscaped area owned by the owner of the permitted sewerage system; or

(C) the effluent applied to such site is generated within an area for which the commission has adopted a no-discharge to surface water rule.

(14) Navigation use - A recognized use that is not currently included in any water rights.

(15) Non-consumptive use - The use of water for those purposes not otherwise designated as consumptive uses under this section, including hydroelectric power, navigation, non-consumptive recreation and other beneficial uses, consistent with the meaning of these uses and for which water may be appropriated under the Water Code, §§11.023-11.024.

(16) Other use - Any beneficial use not otherwise defined herein.

(17) Recreational use - The use of water impounded in or diverted or released from a reservoir or watercourse for fishing, swimming, water skiing, boating, hunting, and other forms of water recreation, including aesthetic land enhancement of a subdivision, golf course or similar development.

(18) Recharge use - The use of surface water to either increase the amount of natural recharge to an underground aquifer or the injection of water into an aquifer.

(19) TOC - Total organic carbon.

(20) Traditional pollutants - the wastewater parameters typically found in wastewater [discharge] permits, specifically oxygen demand (BOD/COD/TOC), total suspended solids (TSS) and ammonia. For the purpose of this section, COD and TOC are converted to BOD values, and the higher value is used in fee calculations. COD and TOC are expressed in terms of BOD at the rate of three pounds of TOC equal to one pound of BOD (3:1) or eight pounds of COD equal to one pound of BOD (8:1).

(21) TSS - Total suspended solids.

(22) Wastewater permit - A permit issued by the commission under authority of the Texas Water Code, Chapter 26, including those permits issued under the authority of both the Texas Water Code, Chapter 26 and other statutory provisions (such as the Health and Safety Code, Chapter 361). For the purpose of this section, a permit shall include any authorization under Water Code Chapter 26 to treat or discharge wastewater, including a registration or permit by rule.

(23) Water right - A right acquired under the laws of the state and the rules of the commission to impound, divert, or use state water.

(24) Aquaculture - The commercial propagation of aquatic species utilizing ponds, lakes, fabricated tanks and raceways, or other similar structures.

(b) For the purpose of recovery of the costs of development of regional water quality assessments and administration of the provisions of this chapter, a fee is assessed against water right holders and wastewater permit holders in each watershed of the state in proportion to their right to use water from, or to discharge wastewater into, the watershed. The fee calculation is based on the authorized limits contained in wastewater permits and water rights as of September 1 each year. All fee calculations are to be based on the parameters specified in the permit or water right without regard to the actual amount or quality of effluent discharged or the actual amount of water used. Fees do not apply to those domestic and livestock water use applications which are exempt from the need for authorization from the commission.

(c) Wastewater permit holders shall be assessed a fee based on the authority of a permittee to dispose of or discharge wastewater under a permit or other authorization issued pursuant to the Texas Water Code, Chapter 26. The fee shall be assessed on the basis of permitted flow and traditional pollutant limits and determined as the sum of factors in paragraphs (1) - (3) of this section. When calculating the charge based on flow, this amount shall be calculated based on the daily average flow limit in the permit. For permits that do not have a daily average flow limit, the charge shall be based on 50% of the daily maximum flow limit:

(1) for contaminated discharges, \$375 per MGD;

(2) for uncontaminated discharges, \$1.75 per MGD;

(3) for each traditional pollutant, \$3.00 per pound per day.

(d) The annual fee assessed for each wastewater discharge permit shall be a minimum of \$300 and shall not exceed \$40,000. The fee for a permit which does not authorize the discharge of wastewater, including evaporation and land disposal permits, shall be \$200. The fee for an inactive permit shall be \$150. No fee will be assessed for aquaculture wastewater permits.

(e) For municipal or industrial water rights, or portions thereof, not directly associated with a facility or operation which is assessed a fee under subsection (c) or (d) of this section, and for all other types of water rights except irrigation, each water right holder shall pay a fee based on the authorization to impound, divert or use state water. The fee for each water right authorizing diversion of more than 250 acre-feet per year for consumptive use, other than for irrigation, shall be \$.22 per acre-foot up to 20,000 acre-feet, and \$.08 per acre-foot thereafter. An authorization to impound water will be assessed a fee only when there is no associated consumptive use authorized, and then the fee will be calculated at the nonconsumptive rate described below. Except for water rights for use for hydroelectric generation, the fee shall be \$.021 per acre-foot for water rights for non-consumptive use above 2500 acre-feet per year up to 50,000 acre-feet, and \$.0007 per acre-foot thereafter. The fee for water rights for use for hydroelectric generation shall be \$.04 per acre-foot per year up to 100,000 acre-feet and \$.004 per acre-foot thereafter.

(f) Water which is authorized in a water right for consumptive use, but which is designated by a provision in the water right as unavailable for use may be exempted from the assessment of a fee under subsection (e) of this section.

(g) A retail public utility as defined by Texas Water Code, §13.002, which is subject to a water quality assessment fee under this chapter may collect from each customer a charge to recover the amount of the fee assessed. The total amount recovered by a retail public utility shall not exceed the amount assessed under this chapter plus any reasonable costs of collection. Any pass-through mechanism for the fees shall be fair and equitable for all customers and may be subject to review by the commission.

(h) The portion of a water quality assessment fee recovered from a customer of a retail public utility may be listed on the customer's bill as a separate item and may be collected in addition to other regulatory assessments or charges for utility services.

(i) The portion of a water quality assessment fee recovered from a customer by a retail public utility is not part of the rates of that utility. This provision shall apply to a retail public utility providing water and/or wastewater service.

(j) Water quality assessment fees are due within 30 days of the billing date each year. Fees shall be paid by check, either personal or certified, or by money order payable to the Texas Natural Resource Conservation Commission. A person failing to make payment of the fees imposed under this section when due shall be assessed penalties and interest in accordance with Chapter 12 of this title (relating to Payment of Fees).

(k) New wastewater permits and water rights granted after September 1 will be billed at the next regular billing date. Any change in authorization will not affect any fee already billed for the year in which the authorization change is made. Cancellation or revocation, whether by voluntary action on the part of the

permittee or water right holder or as a result of proceedings initiated by the commission, will not constitute grounds for a refund of any water quality assessment fee previously paid.

(l) The commission shall monitor both the collection of fees under this section and the allocation of fee revenues under §320.22 of this title (relating to Allocation of Water Quality Assessment Fee Revenue) for the river basins of the state. The commission shall adjust the fee rates established under this section to the extent necessary to ensure the adequate support of the programs undertaken to implement this chapter and the equitable assessment of fees within each watershed and region of the state. If the fees collected for this program in any fiscal year should exceed \$5 million by more than one percent, the commission shall make a proportional downward adjustment of the fee rates for the next fiscal year to attempt to limit the collection to \$5 million per year.

Adopted January 22, 1997

Effective February 14, 1997

**§320.22. Allocation of Water Quality Assessment Fee Revenue.**

(a) A river authority or designated local government shall be eligible for reimbursement of the costs of development of water quality assessments and implementation of the provisions of this chapter.

(b) The schedule and amount of any reimbursement shall be determined by mutual agreement of the commission and the appropriate river authority or local government based on an approved water quality assessment report or work plan as required under §320.5 of this title (relating to Assessment Reports and Work Plans) or §320.7 of this title (relating to Responsibilities of River Authorities and Designated Local Governments), respectively.